



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
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Washington, D.C. 20231

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**JAN 21 1997**

**OFFICE OF PETITIONS  
A/C PATENTS**

In re Application of  
Philippe Jean Henri Berna  
Application No. 08/580,493  
Deposited: December 29, 1995  
For: PROCESS FOR MAKING A VERSATILE  
CLAMPING DEVICE DESIGNED TO HOLD  
OBJECTS WITHOUT DAMAGING THEM, SUCH  
A DEVICE AND ITS USE

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: LETTER REGARDING  
: IMPROPER FILING  
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The above-identified application was recently referred to this office for review of the filing date accorded the application.

The application was deposited on December 29, 1995, as a continuation application under 37 CFR 1.62 based on prior application No. 08/321,589.

This application is not a proper filing under 37 CFR 1.62, because the prior application was abandoned prior to the date of deposit of the 37 CFR 1.62 application.

37 CFR 1.62(a) reads, in part, as follows:

A continuation, continuation-in-part, or divisional application, which uses the specification, drawings and oath or declaration from a prior nonprovisional application which is complete as defined by § 1.51(a)(1), and which is to be abandoned, may be filed under this section before the payment of the issue fee, abandonment of, or termination of proceedings on the prior application, or after payment of the issue fee if a petition under § 1.313(b)(5) is granted in the prior application. (emphasis supplied)

The file of prior application No. 08/321,589 reveals that a final Office action was mailed therein on July 3, 1995, setting a 3-month shortened statutory period for response. On October 16, 1995, an "Advisory Action" was mailed resetting the period for response to the final Office action to expire "three months from the date of the final rejection or as of the mailing date of this Advisory Action, whichever is later." Thus, the period for

response to the final Office action expired on October 16, 1995. On December 1, 1995, applicant filed a petition and fee for a one month extension of time and a notice of appeal. However, any petition for a one month extension of time under 37 CFR 1.136(a) had to be filed no later than November 16, 1995. Therefore, the petition for extension of time filed on December 1, 1995, was untimely and not effective to extend the period for response as set by the "Advisory Action" mailed October 16, 1995. As a result, the prior application became abandoned on October 17, 1995, prior to the date of deposit of the 37 CFR 1.62 application.

Since the present 37 CFR 1.62 application was not filed before the abandonment of the prior application, the filing under 37 CFR 1.62 is improper. Accordingly, the application is not entitled to a filing date under 37 CFR 1.62.

If applicant desires to prosecute this application, then appropriate steps must be taken pursuant to 37 CFR 1.137 to revive prior application No. 08/321,589 to establish copendency between application No. 08/321,589 and the present application. Attention is directed to the one year time period contained in 37 CFR 1.137(b) for revival of an application where the delay was unintentional. This time period may be waived under certain conditions (see MPEP 711.03(c), particularly page 700-97) (copy attached). Inquiries regarding petitions to revive should be directed to the Office of Petitions staff at (703) 305-9282.

Any petitions under 37 CFR 1.137 and 1.183 must be promptly filed and should be addressed as follows:

By mail: Assistant Commissioner for Patents  
Box DAC  
Washington, D.C. 20231

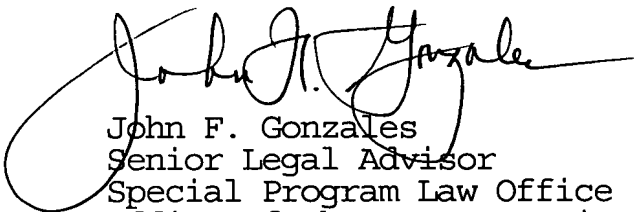
By FAX: (703) 308-6916  
Attn: Special Program Law Office

By hand: One Crystal Park, Suite 520  
2011 Crystal Drive  
Arlington, VA

The application will be retained in this office to await any petition to revive directed to prior application No. 08/321,589. Failure to seek revival of the prior application in a timely manner will result in the return of the present application to the examining group for unbundling the file of the prior application from the file of the present application, after which, the file of the present application will be returned to Application Processing Division for processing as an improper

application under 37 CFR 1.62 (no filing date granted).

Telephone inquiries specific to this letter should be directed to the undersigned at (703) 305-9282.

A handwritten signature in black ink, appearing to read "John F. Gonzales", is written over the typed name and title.

John F. Gonzales  
Senior Legal Advisor  
Special Program Law Office  
Office of the Deputy Assistant Commissioner  
for Patent Policy and Projects

JFG

Enclosure: MPEP 711.03(c)